Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *IB v. AZ*, 2025 BCCRT 1268

Publication Ban Applies

BETWEEN:

I.B.

APPLICANT

AND:

A.Z.

RESPONDENT

REASONS FOR DECISION AND PROTECTION ORDER

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. The applicant, who I will call IB, says the respondent, who I will call AZ, shared intimate images of her without her consent. The applicant claims $5,000 in damages under section 6 of the *Intimate Images Protection Act* (IIPA). The

respondent denies the applicant's claim. Both parties are adults and represent themselves.

2. The applicant also applied for various intimate image protection orders under IIPA section 5. I wrote a separate decision for that application. I did not publish that decision because section 136.4(1)(c) of the *Civil Resolution Tribunal Act* (CRTA) exempts IIPA protection order decisions from the general requirement that the Civil Resolution Tribunal (CRT) publish all final decisions.

JURISDICTION AND PROCEDURE

3. The CRT has jurisdiction over this damages claim under section 118 of the CRTA. IIPA section 6 creates a statutory tort for the non-consensual sharing or threatened sharing of intimate images. Under the IIPA, the CRT may order compensatory, aggravated, and punitive damages, up to the CRT's $5,000 small claims monetary limit. These are the CRT's formal written reasons.

4. CRTA section 39 says the CRT has discretion to decide the hearing's format, including whether it is an oral hearing or based on written materials. The CRT's mandate includes speed, efficiency, and proportionality. I find I can fairly make an expedited decision based on the written material before me.

5. CRTA section 42 says the CRT may accept as evidence information that it considers relevant and appropriate, even if it would not be admissible in court.

Publication ban and sealing order

6. IIPA section 5(9) says that an "individual" must not be named in a "determination or order" unless they are a respondent. Section 1 defines "applicant" as an "individual". I find the applicant is an "individual", so I have not named her in the style of cause (title page) above, because I find this is a decision related to the protection order decision.

7. IIPA section 13 requires me to order a publication ban on the applicant's name or anything that would identify her. As the parties are former spouses, I find that identifying the respondent may indirectly identify the applicant. So, **I order a ban on publishing the applicant's and respondent's names or anything that would identify them.** Given this publication ban, I have anonymized the parties' names. I also order that the CRT's dispute file be sealed and only disclosed by order of the British Columbia Supreme Court or the CRT. As the applicant is an adult, she may ask the CRT to cancel the publication ban order.

ISSUE

8. The issue in this dispute is whether the applicant is entitled to damages under IIPA section 6, and if so, how much.

BACKGROUND, EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant must prove her claim on a balance of probabilities, which means more likely than not.

10. Here, the applicant must first prove the respondent shared or threatened to share an "intimate image" depicting the applicant, without the applicant's consent. If the applicant does so, then she must prove she is entitled to her claimed damages.

11. As noted above, the parties are former spouses. In the course of the parties' family law proceedings when their marriage ended, the respondent provided the British Columbia Supreme Court with an affidavit in support of parenting orders and for the cancellation of a protection order. In that affidavit, the respondent included approximately 63 photos of himself with the applicant. Of those photos, 13 show the applicant without her hijab.

12. The applicant says that because she is a Muslim woman, she does not appear unveiled, without her hijab, in front of unrelated men. She argues the involuntary exposure of her hair, arms, or body to unrelated men is equivalent to public nudity.

She says the respondent, who shares her faith, knows this and improperly submitted the photos to the court in an attempt to humiliate and degrade her. So, she seeks damages for the respondent's unlawful conduct.

13. The respondent says he was justified in providing the pictures to the court, in order to defend himself against the applicant's claims. He also denies any of the images are "intimate images" as defined by the IIPA.

14. In my reasons for decision in the protection order application, I found none of the 13 images met the definition of "intimate image" in IIPA section 1. That is, I found none of the images depicted the applicant nude, nearly nude, engaged in a sexual act, or exposing her genitals, anal region, or breasts.

15. Although the applicant subjectively believes the images were "intimate" as defined by the IIPA, I found the legislation's intent was not to cover such a situation. The definition of "intimate image" in the IIPA was based on the *Uniform Non-Consensual Disclosure of Intimate Images Act* published by the Uniform Law Conference of Canada (ULCC).[1] In the commentary to the definition of "intimate images", the ULCC noted that because individuals hold a variety of views on what is considered "intimate", it is not possible in this targeted legislation to accommodate all conceptions of intimacy. The Working Group specifically gave the example of a spouse taking a photo of a woman while not wearing her niqab or hijab, which may be considered by that woman to be intimate. However, while noting they were sympathetic to that, the Working Group said that the proposed legislation does not offer a remedy in that case. The ULCC noted that general privacy legislation or common law privacy torts may apply to images that do not meet the IIPA's definition of "intimate image". I agree with this approach.

16. I find the applicant's images without her hijab do not depict her as "nearly nude".

[1] British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 42nd Parl, 4th Sess, Issue No 295 (30 March 2023) at 1310. Report available at https://www.ulcc-chlc.ca/ULCC/media/EN-Uniform-Acts/Uniform-Non-consensual-Disclosure-of-Intimate-Images-Act-(2021).pdf.

17. There was also one image that shows the applicant and respondent kissing in bed, which I call the kiss photo. The applicant is under the covers, with a shirt on up to her neck, covering her arms and chest. I found the kiss photo did not show the applicant as nude, nearly nude, or exposing her genitals, anal region, or breasts. Additionally, I found that it did not depict the applicant engaging in a sexual act.

18. "Sexual act" is not defined in the IIPA, so I considered other definitions and interpretations. Merriam Webster's online dictionary defines "sexual" as "having or involving sex" and "sex", in this context, as "sexual intercourse", which may include oral, anal, or vaginal sex. I find that kissing, although it can be intimate, is not by definition a sexual act. I say this because parents and grandparents kiss their children and grandchildren, friends may kiss to say hello, people may kiss their pets. I also accept that depending on the context, kissing can be a sexual act. In the kiss photo, it could be implied that the parties recently had or were about to have sexual intercourse. However, I find that implication alone is insufficient to say that this photo depicts a "sexual act". There is nothing overtly sexual about the photo, and the applicant does not argue the photo is one of a series of other photos that are more explicit. In fact, the next photo in the series is of the parties next to each other in bed, smiling for the camera.

19. In *R v. H.O.*, 2019 ONCJ 957, at paragraph 83, the Ontario Court of Justice discussed when kissing is a sexual act. The court found that making out, or even a deep or prolonged kiss, is distinguishable from a "quick and innocent peck that one might exchange with a loved one". Although that decision was about criminal sexual assault charges, I find this aspect of it applicable and persuasive in this context. Here, the kiss photo depicts the applicant, under the covers and at least clothed up to her neck, engaged in what appears to be a "peck" with the respondent, who is shirtless. There is no indication the kiss was prolonged. Given the above, I found the kiss photo did not depict the applicant engaging in a sexual act.

20. As a result, while I sincerely appreciate the applicant's belief that the images were intimate, I found none of the images of the applicant without her hijab met the limited definition of "intimate image" in the IIPA.

21. Since I found the images did not meet the definition of "intimate images" in the protection order decision, and I adopt those reasons here, I find the applicant has not proven she is entitled to damages. Given this, I dismiss her claim for damages.

22. I note the applicant also claims the respondent committed other torts, and breached the *Privacy Act* and the *Canadian Charter of Rights and Freedoms.* The *Privacy Act* says it is a tort, actionable without proof of damage, to invade another person's privacy. I make no findings about whether the respondent breached the *Privacy Act* for two reasons. First, the CRT's limited jurisdiction in intimate images disputes does not include claims under the *Privacy Act*. Second, section 4 of the *Privacy Act* says a claim under it must be determined by the British Columbia Supreme Court. So, to the extent the applicant claims a breach of the *Privacy Act*, I refuse to resolve that claim because it is outside the CRT's jurisdiction.

23. For the applicant's claims that the respondent committed the tort of intentional infliction of mental distress and public disclosure of private facts, IIPA section 6 says damages claims under the IIPA require the applicant to prove the respondent distributed or threatened to distribute the applicant's intimate image. The IIPA does not provide a remedy for the torts the applicant raised in her submissions, and the applicant brought this claim specifically under the IIPA. So, I limited my decision to the IIPA, and I make no comment or finding about whether the applicant has a legitimate claim under the common law torts she raises.

24. Finally, the applicant alleges the respondent breached sections 2(a) and 7 of the *Charter*. Under CRTA section 113, the CRT has no jurisdiction over constitutional questions. So, to the extent the applicant claims under the *Charter*, I refuse to resolve that claim because it is outside the CRT's jurisdiction.

25. That said, I will point out the following. *Charter* section 2(a) provides that everyone has the freedom of conscience and religion, and section 7 says everyone has the right to life, liberty, and security of the person. However, *Charter* section 32(1) clearly states the *Charter* applies to the Parliament and government of Canada, and to the legislature and government of each province. As noted in *McKinney v. University of Guelph*, [1990] 3 SCR 229, at page 261, the *Charter* is an instrument for checking the powers of government over the individual. Private activity, that is, conduct between private individuals, is excluded.

Fees and dispute-related expenses

26. Under section 49 of the CRTA and the CRT rules, a successful party is generally entitled to reimbursement of their tribunal fees and dispute-related expenses. As the applicant was not successful, I dismiss her claim for reimbursement of tribunal fees. The respondent did not pay any fees, but claimed an unspecified amount for stress related to the applicant disclosing some personal information contained within the affidavit that was submitted as evidence. This is not actually a claim for dispute-related expenses, but rather a substantive claim for damages for breach of privacy. The respondent did not file a counterclaim. However, even if he had, the *Privacy Act* says it is a tort, actionable without proof of damage, to invade another person's privacy. I make no findings about whether the applicant breached the *Privacy Act*. Section 4 of the *Privacy Act* says a claim under it must be determined by the British Columbia Supreme Court. So, to the extent the respondent claims a breach of the *Privacy Act*, I refuse to resolve that claim because it is outside the CRT's jurisdiction. If the respondent alleges the applicant committed one of the common law torts discussed above, I find that is outside the scope of this IIPA decision, and I make no findings about it. For clarity, I make no order for dispute-related expenses.

ORDERS

27. I dismiss the applicant's claims.

28. **Under IIPA section 13, I order a ban on publishing the applicant's or the respondent's names or anything that would identify them.**

29. I order the dispute records sealed. Only the parties, their representatives (if any), and the CRT may have access to the dispute records. With the applicant's consent, the CRT may share information from the dispute record with the Intimate Images Protection Service of the British Columbia Minister of Public Safety and Solicitor General.

30. This is a validated decision and order. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of that court.

Andrea Ritchie, Vice Chair